IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

WP(C).No. 31722 of 2007(B)

AGAINST THE ORDER IN EP 196/2007 IN
OS.886/2003 of ADDL.MUNSIFF COURT, KOLLAM

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PETITIONERS:

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1. DAYAL, AGED 35 YEARS,
S/O.SREEDHARAN, SHOP.NO.319 A,
WARD NO.12, MAYYANAD PANCHAYATH,
MUMPINAL THAZHUTHALA VILLAGE, FROM CHEMBAKAM
VEEDU, PARAKKULAM, THAZHUTHALA.

2. THANKAMANI, AGED 30 YEARS,
W/O.DAYAL, SHOP. NO.319 A,
WARD NO.12, MAYYANAD PANCHAYATH,
MUMPINAL THAZHUTHALA VILLAGE, FROM CHEMBAKAM
VEEDU, PARAKKULAM, THAZHUTHALA.

BY ADV. SRI.V.V.RAJA
SRI.R.RENJITH

RESPONDENT:

SIVAPRASAD, AGED 45 YEARS,
S/O.SREEDHARAN, RUKMALAYAM, VADAKKUMKARA
KIZHAKKECHERRY, THAZHUTHALA VILLAGE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.31722 of 2007

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Dated this the 25th day of October, 2007.

JUDGMENT

This Writ Petition is filed to call for the records and set aside Ext.P3 and for a further direction to the court below to consider and pass appropriate orders on Exts.P4 and P5 within a time frame. Plaintiff in the suit had obtained an ex parte decree against the defendants and moved an application for delivery of the property and the court has directed delivery of the property on 26.10.2007. The decree was obtained ex parte and with a delay of 204 days the defendants have moved an application for condoning the delay and setting aside the ex parte decree as I.A.No.4814 of 2007 and I.A.No.4815 of 2007 and they are pending consideration before the very same court.

2. It is true that when the execution is filed within two years from the date of the decree notice is not a mandatory requirement. But now it can be seen that the defendants have moved an application for setting aside the ex parte decree and it

is pending consideration before the very same court. So, principles of natural justice requires consideration of those applications before the judgment debtors are evicted from the petition schedule premises.

3. Therefore, I direct the learned Munsiff to dispose of I.A.No.4814 of 2007 and I.A.No.4815 of 2007 pending before the said court within a period of six weeks from today and further direct the Munsiff to defer the delivery till a final decision is taken in those applications.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

ess 25/10